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6 Attorneys for Plaintiff,
 7 Liberty Media Holdings, LLC

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 LIBERTY MEDIA HOLDINGS, LLC)

11 Plaintiff,)

12 vs.)

13 SERGEJ LETYAGIN d/b/a)
 14 SUNPORNO.COM, IDEAL CONSULT,)
 15 LTD., "ADVERT", "CASTA",)
 "TRIKSTER", "WORKER", "LIKIS",)
 16 "TESTER" and DOES 1-50)

17 Defendants)

Case No. 12-cv-00923-LRH-GWF

**MOTION TO STRIKE SECOND
AFFIDAVIT OF SERGEJ LETYAGIN**

18
 19 Plaintiff Liberty Media Holdings, LLC hereby moves to strike the Second Affidavit of
 20 Sergej Letyagin (ECF 30-1), as it inappropriately introduces arguments and evidence.

21 Defendant Letyagin's second affidavit was filed in conjunction with the Defendants'
 22 Reply to the Motion to Dismiss. ECFs 30, 30-1. However, this affidavit raises factual issues
 23 that were not raised in previous materials submitted by the Defendants. "[The] district court
 24 need not consider arguments raised for the first time in a reply brief." *Zamani v. Carnes*, 491
 25 F.3d 990, 997 (9th Cir. 2007). This is because "the opposing party is not afforded any
 26 opportunity to respond to new issues raised in a reply, which is ordinarily the last document
 27 submitted prior to the Court's ruling on a motion." *Carstarphen v. Milsner*, 594 F. Supp. 2d
 28 1201, 1204 n.1 (D. Nev. 2009). See also *Shlesinger v. Bank of Am.*, N.A., 2012 U.S. Dist.

1 LEXIS 102030 (D. Nev. July 23, 2012) (Pro, J.) (“[T]he Court declines to consider [plaintiff’s]
 2 new argument.”); *Friedman v. Canteen Vending*, 2011 U.S. Dist. LEXIS 38733 (D. Nev. Apr. 7,
 3 2011) (“The court will not consider arguments raised for the first time in a reply brief.”). In
 4 *Lucas v. Bell Trans.*, a defendant’s “untimely reply” and “newly-provided declaration” were not
 5 considered “as [plaintiff] did not have an opportunity to respond to them.” 773 F. Supp. 2d 930,
 6 939 (D. Nev. 2011).¹

7 Defendants’ failure to include all arguments in their initial motion is particularly
 8 unforgiveable, given the vast amount of time, energy, and pages they expended to launch
 9 irrelevant side-show arguments. It is inappropriate for Defendants to file affidavits with reply
 10 briefing as has been done here. As such, Plaintiff requests that the Court strike the Second
 11 Affidavit of Sergej Letyagin, not due to it being untimely, but because of the newly raised
 12 arguments it contemplates, without allowing Plaintiff the opportunity to respond.

13 Accordingly, the Court should strike the Second Affidavit of Sergej Letyagin from the
 14 record.

15 Dated: August 1, 2012

Respectfully Submitted,
s/Marc J. Randazza

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27 _____
 28 ¹ Although the Defendants’ reply was technically “untimely,” the Plaintiff has waived any right
 to object on that basis. ECF 33.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed using this Court's CM/ECF system on August 1, 2012. As no other Defendants have been identified, they cannot be served.

Dated: August 1, 2012

Respectfully Submitted,

s/Marc J. Randazza

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